

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Carter Farm )  
APL-017-06 ) **Decision**

This Decision is in response to an appeal (APL-017-06) of a proposed denial of National Organic Program (NOP) certification to Carter Farm, by OCPP/Pro-Cert Canada, Inc., (OC/Pro), for an operation deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the regulations promulgated thereunder.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, and handling operations to the National Organic Standards (7 CFR Part 205). Certifying agents also initiate compliance actions to enforce program requirements. Noncompliance procedures are set forth in Section 205.662 of the NOP regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator pursuant to Section 205.680 of the NOP regulations.

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

## FINDINGS OF FACT

- 1) OCPP/Pro-Cert Canada, Inc., (OC/Pro), Canada, was granted USDA accreditation on May 24, 2002, the scope of which included crop, livestock, wild crop and handling. Larry Lenhardt is the CEO of OCPP Ontario, Inc.<sup>3</sup>
- 2) Timothy Carter of Carter Farm, Albion, ME, completed a Producer Application & Contract for Organic Certification and Appendix A Organic Livestock/Herds/Flock on May 9, 2006, to obtain NOP certification from OC/Pro for the production of milk and silage. According to the application, the dairy herd included 35 milk cows and 19 heifers.<sup>4</sup>
- 3) Inspector, (b)(6) / (b)(7), inspected Carter Farm on July 28, 2006. The inspector's narrative stated, "Cows that are transitioning were born under organic management and certified. The farm left certification and produced conventional milk, and is now transitioning the cows back into organic production. (Tim said he thinks the prohibition to retransitioning animals only applies to cows that went through the transition process, and not to cows that were born under organic management.)"
- 4) On August 28, 2006, Sherry L. Nielsen, Assistant to the CEO, OCPP Ontario, Inc., issued a Notice of Non compliance and Denial of Certification to Tim Carter. The letter stated, "You have previously certified your dairy herd using the "80/20" feed provision in §205.236, while certified organic and compliant with

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<sup>3</sup> OCPP/Pro-Cert is comprised of an Eastern and Western affiliate. The former, identified as OCPP Ontario Inc., is based in Cambray, Ontario and issued the denial of certification to Carter Farm. The Western affiliate, Pro-Cert Organic Systems, is located in Saskatoon, Saskatchewan.

<sup>4</sup> The Carter Farm Producer Application & Contract for Organic Certification stated that the "facility" was previously certified by the Maine Organic Farmers and Gardeners Association (MOFGA) from 1998-2004. Per Mr. Carter, this certification covered both dairy and crop production.

this regulation by MOFGA.<sup>5</sup> Therefore, you are not eligible to use this provision again.”<sup>6</sup>

- 5) On September 25, 2006, Timothy Carter filed an appeal of the denial of certification. The appeal letter, dated September 19, 2006, stated that the operation shipped milk to an organic handler from 1998 to 2004. According to Mr. Carter, in the fall of 2004, the operation surrendered certification following a decrease in the quality of organic grain products which left the cows in poor condition. The letter continued to explain that prior to the 2006 application for certification the livestock were fed conventional grain, but began receiving a 100% organic ration on May 16, 2006.<sup>7</sup>

## DISCUSSION

The appellant requested certification of a dairy operation with a distinct herd that had been under continuous organic management until the surrender of NOP certification in 2004. Following the surrender the operator incorporated conventional grain into the total feed ration of the dairy livestock. In August 2005, the operator began to transition the same herd to organic management per the 80/20 feed exemption, and beginning in May 2006, the total feed ration was composed of 100% organic feed. At the time of the

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<sup>5</sup> The 80/20 feed provision refers to §205.236(a)(2) “...*Except*, That, when an entire, distinct herd is converted to organic production, the producer may: (i) For the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in a compliance with organic crop requirements; and (ii) Provide feed in compliance with §205.237 for the final 3 months...”

<sup>6</sup> In correspondence with Shannon Nally, AMS Compliance Officer, Ms. Neilsen reported that Mr. Carter’s present request for certification pertained to a separate entire, distinct herd which had not been previously converted under the 80/20 provision. This statement is not consistent with the information presented in the inspection report and by Mr. Carter, which does not support that this herd is distinct from the one previously certified by MOFGA. Please see footnote reference #7.

<sup>7</sup> In correspondence to Ms. Nally, dated December 15, 2006, and January 22, 2007, Mr. Carter verified that beginning in August 2005, 9 months prior to May 2006, the livestock were fed in accordance with the 80/20 provision. Furthermore, Mr. Carter clarified that prior to the consumption of conventional grain the livestock had been raised under continuous organic management from the last third of gestation and maintained as a closed herd, with 8 remaining cows that were previously certified. Heifers, raised by Carter Farm, comprised the remainder of the milking herd.

request for certification, the herd included offspring of the livestock that were covered under the initial certification.

The certifying agent denied certification on the basis that the 80/20 conversion provision cannot be used repeatedly by the same operator to transition separate distinct herds.

## **CONCLUSIONS**

The certifying agent's decision to deny certification to this dairy operation is appropriate. While the certifying agent cited an improper basis for the decision, the circumstances nonetheless preclude NOP certification of this operation. The distinct herd was comprised of livestock, some of which had transitioned to organic production under the 80/20 provision and other animals that were under continuous organic management since the last third of gestation until the feeding of conventional grain which occurred prior to the present request for certification.

The feeding of conventional grain constituted a lapse in organic management and, therefore, the previous history of conversion under the 80/20 provision is immaterial. That these animals were under continuous organic management and then removed from such a system permanently disqualifies each animal and edible products from that animal from attaining organic status in accordance with 205.236 (b)(1), "Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may not be sold, labeled, or represented as organically produced."

In accordance with 205.236(a)(2)(iii), "Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation," the following would be excluded from certification via conversion: (a) any offspring born during the period of conventional management; and

(b) replacement animals that have not been under organic management since the last third of gestation.

### **DECISION**

The appeal is denied with respect to certification of this entire herd, but allows that certain animals may be certified within the parameters of the above criteria.

Done at Washington, D.C., on this \_5th\_  
day of \_\_\_\_March\_\_\_\_\_, 2007.

/s/

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Lloyd C. Day  
AMS Administrator